80-2191 No.

Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,

In The

Supreme Court of the United States

October Term, 1980

TOWN OF MORRISTOWN, a municipal corporation of the State of New Jersey,

Petitioner,

vs.

S. HOWARD WOODSON, JR., President, State of New Jersey Civil Service Commission, and DAVID F. WILLIAMSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTIONS PRESENTED

The questions presented for review are:

(1) Whether the petitioner municipality who terminated respondent's employment for economic reasons was entitled to a specific factual finding below that respondent's position was sinecure in light of the uncontradicted evidence which showed that the respondent's Civil Service functions had waned through the years and respondent's municipal employment had consumed varied, menial non-Civil Service tasks?

(2) Whether the State Civil Service Commission and the New Jersey courts below shifted the burden of proof required to overturn an economic layoff allegedly made for political reasons by totally ignoring the uncontradicted evidence that respondent's Civil Service functions had grown to be sinecure in violation of the due process clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDINGS

A list of all parties to the proceeding in the court below whose judgment is sought to be reviewed is as follows:

(a) Town of Morristown, State of New Jersey — petitioner;

(b) A. Howard Woodson, Jr., President, State of New Jersey, Civil Service Commission—respondent;

(c) David F. Williamson — respondent.

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No.

In The

Supreme Court of the United States

October Term, 1980

TOWN OF MORRISTOWN, a municipal corporation of the State of New Jersey,

Petitioner,

vs.

S. HOWARD WOODSON, JR., President, State of New Jersey Civil Service Commission, and DAVID F. WILLIAMSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey filed on February 11, 1981 and denial of petitioner's motion for reconsideration filed on March 19, 1981.

OPINIONS BELOW

The opinions of the Superior Court of New Jersey, Appellate Division and the Supreme Court of the State of New Jersey, were unreported and are reproduced in petitioner's appendix annexed hereto.

The Civil Service hearing officer who heard the testimony below recommended that the layoff be sustained for reasons of economy. The Civil Service Commission disregarded the recommendation. The Superior Court Appellate Division sustained the Civil Service Commission in a one line opinion, citing two cases one of which had previously been overruled by the State Supreme Court. Rehearing to that court was denied. Petitioner's request for certification to the New Jersey Supreme Court was likewise denied as well as petitioner's request for reconsideration to that court.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is based upon 28 U.S.C. §1257(3), providing that this Court may, by writ of certiorari, review any final judgment or decree rendered by the highest court of the State in which a decision could be had, where any title, right, privilege or immunity is specially set up or claimed under the Constitution.

In this cause, petitioner has claimed the right under the due process clause of the Fourteenth Amendment. Petitioner asserts that the decisions of the New Jersey courts, the Superior Court of New Jersey, Appellate Division, and the Supreme Court, violated this amendment.

The judgment of the Supreme Court of New Jersey was originally filed on February 11, 1981; final judgment denying petitioner's motion for reconsideration was filed with the Clerk of the New Jersey State Supreme Court on March 19, 1981.

Petition for writ of certiorari was filed within ninety (90) days after entry of judgment in accordance with 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, Section 1:

> "No State shall . . . deprive any person of life, liberty or property without due process of law."

STATEMENT OF THE CASE

Respondent David Williamson enjoyed the Civil Service title of "Manager of Bus Transportation and Off-Street Parking" for the Town of Morristown. He commenced working for petitioner in that capacity in 1975 at an original salary of $15,000. He immediately expanded the petitioner's bus program from one bus to two free buses; however, after the initial bus transportation system had been established by respondent, Mr. Williamson had much free time to do other municipal tasks. For example, he handled insurance functions on behalf of petitioner and filed workmen's compensation claims with the petitioner's insurance carrier.

Respondent admitted at the hearing before the Civil Service Commission that petitioner had not been in the process of acquiring additional buses, the transportation system was free

and consisted merely of two vehicles, and during four years in the Town's employ, respondent Williamson's off-street parking function was utilized on one occasion. Respondent Williamson freely admitted that his Civil Service function of Manager of Bus Transportation and Off-Street Parking had waned through the years.

At the hearing before the Civil Service Commission below, *numerous witnesses testified on behalf of respondent Williamson* that many municipal officials had criticized respondent Williamson's function and pay scale. Respondent Williamson's position became the topic of discussion at public meetings and members of the governing body of the Town of Morristown objected to the existence of the very position, including then Councilman Donald Cresitello, who became Mayor of the Town of Morristown on January 1, 1978.

Councilman Cresitello ran for Mayor of the Town of Morristown in the Democratic Primary of June 1977, promising the electorate to reduce municipal salaries. As soon as Councilman Cresitello became Mayor on January 1, 1978, many economy measures were taken throughout the municipality. For example, the Town's Department of Planning and Development was abolished and the Director was transferred to another governmental department saving the Town a total of $3,000; the Consumer affairs Director was dismissed and his functions were absorbed by the Mayor's secretary at no additional cost, saving the petitioner $12,000; the Town Engineer's salary was cut from $29,000 to $20,000; the Administrative Assistant to the Administrator was slated for economic layoff and he resigned his position to assume another job in another municipality; a Municipal Court employee resigned and her position was not filled at a savings of $10,000; the Assistant Municipal Engineer's

position was not filled saving $15,000; a mechanic died and his position was not filled, saving $17,000; and a hiring freeze was placed on the Town's Police Department.

The petitioner Town operates under a Mayor-Council Plan F form of government in the State of New Jersey with the Business Administrator as the head of all personnel for the municipality. As the Business Administrator, Arthur Vigilante requested that respondent Williamson, as Manager of Bus Transportation and Off-Street Parking, as well as the Town Electrician and the Consumer Affairs Director, maintain logs of their activities so that Vigilante could study whether the positions were indeed needed. Vigilante testified before the Civil Service Commission that it was he and not the Mayor who decided to offer Mr. Williamson a reduced salary instead of abolishing the position. Mr. Vigilante testified before the Civil Service Commission that Mayor Cresitello never instructed him of any alleged political vendetta against respondent Williamson; instead, Mr. Vigilante who had been in municipal government for some 20 years as a Council member and Municipal Clerk, initiated the review of respondent Williamson's position on his own. The record below reflected that Mr. Vigilante evaluated the job over a period of eight months and finally met with the Mayor to tell him that the job was not needed at all. However, initially, the Mayor, according to Mr. Vigilante below, was of the opinion that Mr. Williamson should be offered the position at a reduced salary of $12,000. Importantly, Mr. Vigilante testified that in January 1979, approximately one month after Vigilante had assumed all of Mr. Williamson's functions, he had done so in a total of one hour per day. The petitioner's governing body saw fit not to budget the position in 1979, likewise in 1980, and likewise in 1981, obviously feeling that the

position was no longer needed, same being absorbed by Mr. Vigilante, the Business Administrator in one hour per day in 1979, and now one hour per week in 1980 and 1981.

At the hearing below, Mr. Williamson's position was that he was fired not in good faith, but as the result of political reasons. Mr. Williamson admitted under oath that he had never been involved in politics and that in fact he and the Mayor had been friends, Mr. Williamson even attending the Mayor's wedding. Williamson also stated that Mayor Cresitello had even advised him of his right to lateral displacement after the employee had been notified of the economic layoff.

Respondent Williamson produced three witnesses at trial who testified that Councilman Cresitello during the primary campaign of 1977 had made statements to the effect that he would not retain Mr. Williamson as the head of the Bus Transportation System if elected Mayor. However, Mr. Vigilante testified that he had absorbed respondent Williamson's Civil Service functions in no more than one hour per day. Mr. Williamson's secretary had been reassigned to another municipal function and his office space, sorely needed in the Town of Morristown, is presently occupied by another Town department. The governing body of the Town of Morristown has not budgeted the position for two years and the termination of Mr. Williamson's functions has saved the Town of Morristown a total of approximately $50,000 per year in salaries, benefits and supporting costs. Mr. Vigilante, as Business Administrator, testified below under oath, that the system had been running economically and efficiently at the time of the Civil Service hearing.

Petitioner raised the issues below that the evidence was uncontroverted, that respondent Williamson's Civil Service

position had become sinecure and he had not met his burden of proof in the within matter. However, petitioner Town of Morristown would be remiss if it did not state herein that it was embarrassed by the brevity and summary manner in which the Appellate Division of the Superior Court of the State of New Jersey, considered the within matter. The Appellate Division below cited two cases, one of which was specifically overruled by the New Jersey State Supreme Court and afforded the Town of Morristown the kind of treatment which we do not expect from our judiciary, especially in light of the financial consequences a decision of this magnitude would befall upon the taxpayers of the Town of Morristown, State of New Jersey. Subsequently, a petition for rehearing to the Superior Court of New Jersey, Appellate Division, was denied without opinion as was the Town's petition for certification to the New Jersey Supreme Court and petition for rehearing in that court. The issues were cogently and precisely presented to all courts in the State of New Jersey, however, they were not passed upon by the courts in the State of New Jersey.

REASONS FOR GRANTING THE WRIT

I.

Petitioner Town of Morristown was entitled to a factual finding below that respondent Williamson's position had grown sinecure as same would have constituted a complete defense to the within cause.

The record contains ample evidence that respondent Williamson's Civil Service workload had been drastically reduced since 1975. Williamson was performing "odd jobs" for a prior municipal administration and the Civil Service hearing examiner found in early 1979, *as a matter of fact,* that

petitioner's Business Administrator, Mr. Vigilante, had assumed all of the employee's Civil Service related functions in one hour per day.

It is beyond cavil that a review of the record below reflects the fact that the Civil Service position had grown to be useless and sinecure. The Civil Service Commission, in overturning the hearing examiner who sat at the trial, never addressed the fact, and, accordingly, neither did the Superior Court of New Jersey, Appellate Division, and the New Jersey Supreme Court. A finding that the position had grown needless would have been a complete defense to this matter. Accordingly, it is respectfully submitted that this Court must address the threshold issue in light of the absence of consideration afforded petitioner Town of Morristown, by the courts of the State of New Jersey.

Accordingly, the record facts show in clear detail that respondent's scope of Civil Service employment had waned and had grown to be sinecure. These undisputed facts, which were ignored by the state courts below, are decisive of the issue that petitioner Town of Morristown terminated respondent's municipal employment for reasons other than economy.

Just plain common sense tells us that a municipality may terminate employment with one whose position becomes a burden to the taxpayers. Certainly, a municipality who demonstrates before the appropriate state forum that a paid municipal function is no longer needed must not be burdened with an employee whose salary ranges from $25,000 to $30,000, exclusive of fringe benefits, to merely oversee two free municipal buses. Certainly, the factual record, as outlined above, contain an abundance of evidence to support the hearing examiner's conclusion that respondent Williamson's position with the Town of Morristown was terminated for economy reasons.

The state courts, however, ignored the reality of the situation, merely focused upon vague statements made by witnesses allegedly attributed to the Mayor of the Town of Morristown. No discussion was had below by the state courts concerning the savings of taxpayers' dollars and the worthlessness of respondent Williamson's position.

The Civil Service Commission's opinion and faulty conclusions, sustained without discussion by the state courts of New Jersey, are due to the fact that it totally disregarded the worthless and sinecure nature of respondent Williamson's position. By this process, it was able to say that respondent Williamson was terminated for political reasons only. However, these conclusions take on a different meaning when the following facts are considered: The proofs below reflect that the position which once may have required substantial efforts had waned so much so that the employee also handled non-Civil Service functions such as insurance; the respondent's position had been abolished since 1979 by the Governing Body of the Town of Morristown and the record below is replete with other economy measures taken by the current municipal administration; importantly, respondent Williamson's position had been assumed by his superior in one hour per day. Accordingly, the petitioner was entitled to a finding that respondent's employment with the Town had grown sinecure through the years—this would have been determinative in the instant case.

II.

The New Jersey State Civil Service Commission and the state courts below shifted the burden of proof by totally ignoring the uncontradicted evidence that respondent's Civil Service functions had grown to be sinecure in violation of petitioner's due process rights pursuant to the Fourteenth Amendment of the United States Constitution.

In the State of New Jersey it is hornbook law that "A municipality acting in good faith has the power to lay off, terminate or discontinue the services of an employee for reasons of economy. The separation from employment is presumed to be in good faith and the burden is on the employee to show the contrary." *Sieper v. Department of Civil Service, Passaic,* 21 N.J. Super. 583, 91 A. 2d 619 (App. Div. 1952).

The decisions of the courts of the State of New Jersey have always held that if it is determined that a muncipal function had grown to be sinecure, the inquiry ends and it becomes irrelevant whether an employee demonstrates bad faith in the removal. *See, e.g., Paddock v. Hudson Tax Board,* 82 N.J.L. 360, 83 A. 2d 185 (Sup. Ct. 1912); *Hunziker v. Kent,* 111 N.J.L. 565, 568, 168 A. 2d 825 (Sup. Ct. 1933); *Santucci v. Paterson,* 113 N.J.L 192, 195, 173 A. 2d 611 (Sup. Ct. 1934); *Kessel v. Civil Service Commission,* 130 N.J.L. 618, 619, 34 A. 2d 131 (Sup. Ct. 1943); *Amodio v. Civil Service Commission,* 81 N.J. Super. 22, 194 A. 2d 512 (App. Div. 1963); *Benzoni v. Dept. of Civil Service,* 10 N.J. Super. 103, 76 A. 2d 534 (App. Div. 1950); *Pellet v. Hoboken,* 10 N.J. Super. 52, 76 A. 2d 273 (App. Div. 1950); *Sieper v. Dept. of Civil Service, Passaic,* 21 N.J. Super. 583, 91 A. 2d 679 (App. Div. 1952); *Elwell v. North Bergen Twp.,* 13 N.J. Super. 330, 80 A. 2d 443 (App. Div. 1951); *Chirichella v. Dept. of Civil Services,* 31 N.J. Super. 404, 107 A. 2d 55 (App. Div. 1954). These cases all stand for the well reasoned

proposition that if the office or position is useless and unnecessary and can be abolished without impairing departmental efficiency, the motive for the abolition is irrelevant. The rationale for these cases is obvious: "It would be absurd to hold that a needless position must be continued in existence because an ulterior purpose influenced or played some part in its abolition." *Santucci v. Paterson, supra.*

The decisions of this Court have made crystal clear the fact that the New Jersey courts have shifted the burden of proof in the within matter, contrary to the Fourteenth Amendment of the United States Constitution.

It is clear that the employee has a burden of proving all elements affecting his economic removal, including the fact that his job was not useless. This Court has had the occasion to discuss the interplay between the due process clause and the burden of proof in *Mullaney v. Wilbur,* 421 U.S. 684, 44 L. Ed. 2d 508, 95 S. Ct. 1881 (1975). The *Mullaney* Court specifically reviewed the constitutionality of a Maine statute which "requires a defendant charged with murder to prove that he acted 'in the heat of passion on sudden provocation' in order to reduce the homicide to manslaughter", *Mullaney,* 421 U.S. 684-685. Mr. Justice Powell defined "[t]he issue [to be]whether the Maine rule requiring the defendant to prove that he acted in the heat of passion on sudden provocation accords with due process." The *Mullaney* Court concluded that the due process clause "requires the prosecutor to prove beyond a reasonable doubt that the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case . . . ." *Mullaney, supra* at 704.

So, too, in the instant case it is a due process violation when the Civil Service Commission and the courts of the State of New Jersey are totally silent as to the sinecure nature of a municipal

position abolished by petitioner Town of Morristown and order said employee reinstated based upon vague allegations of political motivation. The employee carried the burden of proving that his position was indeed viable; the absence of specific factual findings to the contrary (which cannot be made based upon the record below since the evidence was uncontroverted and overwhelming that the employee's position was useless) constitutes an impermissible violation of petitioner's Fourteenth Amendment rights to due process and mandates review by this Court.

We believe that the conclusions reached by the State Civil Service Commission and the cavalier treatment afforded the petitioner Town of Morristown by both the Superior Court of New Jersey, Appellate Division and the Supreme Court of the State of New Jersey was invalid both substantively under the evidence presented below and as a matter of law. Certainly the Civil Service Commission and a reviewing court must review the viability and sinecure nature of the employment herein and conclude that once the employee fails to demonstrate that his position was indeed viable all inquiry must end. A thorough review of the record mandates the conclusion that the petitioner's due process rights were violated by the Civil Service Commission's silence concerning the sinecure nature of respondent's employment.

CONCLUSION

Neither the Civil Service Commission nor the courts of the State of New Jersey has addressed the issue of the sinecure nature of the respondent's position with the Town of Morristown. The overwhelming evidence provided to the Civil Service Commission indicated that respondent's Civil Service position has grown to be useless. If the New Jersey forum had addressed this issue, it would have been dispositive of the within matter. By failing to concern itself with this dispositive issue, the forum in the State of New Jersey has effectively shifted the burden of proof and violated the due process clause.

Respectfully submitted,

PHILIP A. KAHN
KAHN & WEINER
Attorneys for Petitioner

APPENDIX

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR CERTIFICATION FILED MARCH 19, 1981

SUPREME COURT OF NEW JERSEY
M-746 SEPTEMBER TERM 1980

RECEIVED
Mar. 23, 1981
Kahn & Weiner
Attorneys at Law
Morristown, N.J.

FILED
Supreme Court
Mar. 19, 1981
Stephen W. Townsend
Clerk

TOWN OF MORRISTOWN,

Plaintiff-Movant,

v.

S. HOWARD WOODSON, etc., et al.,

Defendants-Respondents.

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of denial of petition for certification is denied.

Order

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 17th day of March, 1981.

s/ Stephen W. Townsend
Clerk

ORDER DENYING PETITION FOR CERTIFICATION TO THE SUPREME COURT OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
C-297 SEPTEMBER TERM 1980

TOWN OF MORRISTOWN, etc.,

Plaintiff-Petitioner,

vs.

S. HOWARD WOODSON, JR., etc.,

Defendants-Respondents.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1607-79 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 10th day of February, 1981.

s/ Stephen W. Townsend
Clerk

FILED
Supreme Court
Feb. 11, 1981

ORDER DENYING PETITIONER'S MOTION FOR REHEARING

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-1607-79
Motion No. M-600-80
Before Part F

REC'D.
Appellate Division
Oct. 28, 1980
Elizabeth McLaughlin
Clerk

TOWN OF MORRISTOWN

VS

S. HOWARD WOODSON JR., ET ALS.

JUDGE ALLCORN
PRESSLER

FILED
Appellate Division
Oct. 23, 1980
Elizabeth McLaughlin
Clerk

Moving Papers Filed October 20, 1980

Answering Papers Filed

Order

Dated Submitted to Court October 23, 1980

Dated Argued

Date Decided October 24, 1980

This matter having been duly presented to the court, it is hereby ordered as follows:

Motion for Rehearing Denied

I hereby certify that the foregoing is a true copy of the original on file in my office.

s/ Elizabeth McLaughlin
Clerk

FOR THE COURT:

s/ Samuel Allcorn Jr.
SAMUEL ALLCORN JR.
P.J.A.D.

Witness, the Honorable Samuel Allcorn Jr., presiding judge of Part F, Superior Court of New Jersey, Appellate Division, this 24th day of October 1980.

s/ Elizabeth McLaughlin
Clerk of the Appellate Division

smp

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION OPINION DATED OCTOBER 9, 1980

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1607-79

TOWN OF MORRISTOWN, a municipal corporation of the State of New Jersey,

Plaintiff-Appellant,

v.

S. HOWARD WOODSON, JR., President, State of New Jersey, Civil Service Commission, and DAVID F. WILLIAMSON,

Defendants-Respondents.

Argued September 29, 1980 — Decided Oct. 9, 1980

Before Judges Allcorn and Pressler.

On appeal from New Jersey Civil Service Commission.

Philip A. Kahn argued the cause for the appellant (Kahn & Weiner, attorneys; Mr. Kahn on the brief).

Joel A. Murphy argued the cause for the respondent Williamson (Murphy and Kurnos, attorneys; Mr. Murphy on the brief).

Opinion

A statement in lieu of brief was filed by the Attorney General on behalf of the respondent Civil Service Commission.

PER CURIAM

We are satisfied from a review of the record that there was sufficient credible evidence to warrant the findings and conclusion of the Commission. *R.* 2:11-3(e)(1)(D); *Campbell v. Dept. of Civil Service,* 39 *N.J.* 556 (1963); *Rivell v. Civil Service Comm'n.,* 115 *N.J. Super.* 64 (App. Div. 1971), certif. den. 59 *N.J.* 269 (1971).

Affirmed.

DECISION OF CIVIL SERVICE COMMISSION DATED DECEMBER 26, 1979

STATE OF NEW JERSEY

CIVIL SERVICE COMMISSION

215 East State Street, Trenton

Telephone 292-4150

Release: Friday, January 4, 1980
Issued: December 26, 1979 P.M. Papers

The appeal of David F. Williamson (SS#139-14-0496), Supervisor of Transportation and Parking Facilities, Department of Administration, Morristown, from his layoff effective December 29, 1978, for reasons of economy, was brought on for hearing on the issue of "good faith" on January 22 and 25, March 1, and April 9, 1979, before Hearing Officer Irvine L.H. Kerrison who rendered his report and recommendation on June 13, 1979. Exceptions and cross exceptions were filed by counsel for both parties within the prescribed time.

Having considered the record and the Hearing Officer's report and recommendation issued thereon, and based upon the record herein, and having made an independent evaluation of the same, the Civil Service Commission at its meeting on September 5 and December 4, 1979, makes the following

FINDINGS OF FACT

1. Effective April 22, 1974, Appellant was appointed provisionally to the position of Manager of Business

Transportation and Off-Street Parking, Department of Administration, Morristown.

2. Appellant was appointed by the then Business Administrator of Morristown, Jerry Bittner.

3. The Mayor of Morristown at the time of Appellant's appointment was David Manahan.

4. Appellant's starting salary was $15,000 and his original duties were to commence and to organize a bus service for the Town of Morristown.

5. Organization of a bus service was authorized by public referendum.

6. While organizing a transportation system, Appellant also performed duties related to insurance for the Town of Morristown.

7. In 1975, a reclassification survey was conducted by the Department of Civil Service on behalf of the Appointing Authority, and the general duties of Supervisor of Transportation and Parking Facilities were defined as follows:

> "Under direction, supervises the establishment, development, and maintenance of a transportation and parking system; does related work as required."

8. Effective July 26, 1976, Appellant obtained permanent status in the position of Supervisor of Transportation.

Decision

9. Appellant subsequently took on insurance management duties for the Town of Morristown.

10. Prior to taking on insurance duties, Appellant, at the request of the appointing authority, attended a course in risk management at the University of Maryland.

11. Appellant, except for the assistance of a secretary, worked alone in his title.

12. Effective January 1, 1978, a new Mayor of Morristown, Donald Cresitello, and a new Business Administrator, Arthur Vigilante, took office.

13. Appellant continued performing the same duties subsequent to January 1, 1978 and neither Cresitello or Vigilante expressed any dissatisfaction as to his job performance or as to the extent of his salary and departmental budget.

14. Effective December 29, 1978, Appellant was laid off for alleged reasons of economy and efficiency.

15. In January, 1978, Vigilante mentioned to Appellant that the Mayor "had to take care of campaign promises" and that Appellant's position was going to be eliminated.

16. On August 10, 1978, Appellant was called to Vigilante's office and told that he had an option for looking for another job or taking a cut in salary from his current $19,000 to between $10,000 and $12,000.

17. On August 11, 1978, a newspaper article appeared indicating that Appellant had been offerred the option of finding another job or taking a $9,000 cut in salary.

Decision

18. On March 28, 1978, Appellant was requested to keep a log of work done in his office, and he did so until April 28, 1978.

19. Vigilante testified that from January, 1978 through August, 1978 he made an evaluation of personnel for the purpose of making budgetary cuts.

20. Aside from Appellant, Vigilante did not request a daily log from any other City department head.

21. Vigilante testified that Appellant's layoff did not involve a financial emergency.

22. Vigilante could not point to specific aspects of Appellant's duties which he felt could be done more economically by himself.

23. Operating procedures concerning transportation and risk management — Appellant's duties prior to his layoff — have not yet been established by Vigilante, but he intended to discuss the matter with his clerk/secretary to see who would handle the various aspects of Appellant's job.

24. Written records of Vigilante's alleged evaluations were not kept.

25. Vigilante testified that in making his evaluations, he depended upon his many years of supervisory and personnel experience.

26. In August, 1978, Vigilante testified that he determined that Appellant's position was expendable.

Decision

27. Vigilante testified that he had had an inkling in January, 1978 that Appellant was being paid to much and that his suspicions were subsequently borne out.

28. Vigilante testified that he assumed Appellant's duties after Appellant's layoff.

29. No one but Appellant had been laid off at the time, but Vigilante indicated that other economies had been made through attrition, including: not replacing a clerk in municipal court, not replacing the Assistant Municipal Engineer who resigned, not replacing a deceased automobile mechanic, eliminating the Department of Planning and Development, putting a freeze on hiring of additional police officers, and eliminating the Department of Consumer Affairs.

30. Vigilante testified that further employees may be laid off in the future, but that no specific policy or plan was being pursued.

31. Vigilante testified that pursuant to his general review commenced in January, 1978, personnel may even be hired if staffing considerations demand it.

32. Cresitello made public statements prior to his election that he felt Appellant's position was unnecessary.

33. Cresitello, as a Town Councilman, opposed Appellant's appointment to the post of Manager of Bus Transportation and Off-Street Parking, on grounds that Appellant lacked the job qualifications.

Decision

34. Councilwoman Jenkins testified that in 1977, Cresitello told her on several occasions that he intended to remove Appellant from his position but that he did not intend to abolish the position.

35. Jenkins further testified that Cresitello indicated to her in 1974, when Appellant was originally appointed, that his opposition to Appellant's appointment was a result of differences which "went way back in politics."

36. Councilman Leidy knew of economic pressures to remove Appellant from his position, but he was unaware of efforts on the part of Cresitello to remove Appellant for personal reasons.

37. Councilwoman Brady testified that she did not remember any conversation among council people as to the need for cutting the budget during 1978.

38. Former Supervisor of Rehabilitation of Dwellings, Norman Lattimore, testified that subsequent to the 1977 election primary and prior to the election of Cresitello, Cresitello told him that Appellant and Mr. Gabriel, a CETA employee, would not remain in his administration because they were considered to be adversaries.

39. Charles Cutler, a Morristown resident, testified that Cresitello told him that he had promised his father that he would get rid of both Gabriel and Appellant.

40. Cresitello had opposed a request by Cutler to be appointed as Building Inspector.

Decision

41. Raymond DeChiara, Director of the Urban Renewal Project, Town of Morristown, testified that in 1978, he had heard Cresitello state several times that he intended to abolish Appellant's position.

42. DeChiara took a salary cut of $3,000 in 1978 as a result of the abolishment of the Department of Planning and Development.

43. Mark Pfeiffer, Assistant Business Administrator, Township of Mount Olive, testified that he had held a similar position from June 1975 to June 1978, with the Town of Morristown and that in 1978, Vigilante stated to him that the Mayor wished "to get rid of" Appellant.

44. Manahan testified that he had had several verbal confrontations at political meetings with Cresitello and Cresitello's father over the fact that he had hired Appellant, even though Appellant had previously worked for a Republican Mayor.

45. Bittner testified that Cresitello, when he was yet a Councilman, stated to him at a 1977 Township Budget Session that the positions of Appellant and Gabriel should be eliminated because both parties were political allies of the then current Mayor.

CONCLUSION

The Civil Service Commission does not accept the Hearing Officer's report and recommendation in this matter. Rather, it finds that Appellant's layoff was not done in good faith and that he should be reinstated to his position.

Decision

In effecting layoffs, an appointing authority has broad discretionary powers. It may abolish a position in the classified service and dispense with the services of the employees holding that position, so long as "such action is motivated by a *bona fide* desire to effect economies and increase municipal efficiency." *Greco v. Smith,* 40 N.J. Super. 182, 189 (1966). In such situations, "the separation from employment is presumed to be in good faith and the burden is on the employee to show the contrary." *Sieper v. Department of Civil Service,* 21 N.J. Super. 583, 586 (1962).

In proving that an appointing authority has acted in bad faith, the employee must show that his discharge was not motivated by true considerations of economy and municipal efficiency. As stated in *Greco,*

> "[t]he mere fact that the removal of an individual from the municipal payroll results in an economy is not the exclusive test, since such removal will always be manifested by a saving. The question is, not merely whether a plan conceived and adopted for the purposes of saving money actually in operation attained that purpose, but whether the design in adopting the plan was to accomplish economy or, on the contrary, was to effect a removal of a public employee, protected by Civil Service, without following the statutory procedure for removal. The *City of Newark v. Civil Service Commission,* 112 N.J.L. 571, 574 (Sup. Ct. 1934), *affirmed* 114 N.J.L. 185 (E. & A. 1935). [*Id.* at 190]."

In applying these standards to the instant case, the Commission concludes that Appellant sustained his burden of

proof in showing that the appointing authority had acted in bad faith when laying him off. That abolishing Appellant's position resulted in economy and efficiency is less then clear. True, the appointing authority experienced a saving of approximately $20,000 by doing away with Appellant's salary, but it did not rebut evidence that it had proceeded to lay off Appellant in an arbitrary manner with no thought as to whether economy and efficiency would actually be served. Evidence indicated that no one had fully assumed Appellant's duties. Vigilante claimed to be doing much of Appellant's work, but he freely admitted that operating procedures had not yet been established to handle the various aspects of Appellant's job. He stated that he intended to discuss the matter with Appellant's (and now his own) clerk/secretary to see who would handle which duties.

This latter point leads the Commission to conclude that Vigilante did not have a clear idea as to the full extent of Appellant's duties. Other evidence supports this conclusion. Based on his many years of supervisory and personnel experience, Vigilante felt that Appellant was being paid too much for the amount of work being done. He therefore made a general evaluation of Appellant's position before conducting the layoff. However, he kept no records of this evaluation, and he could not point to specific aspects of Appellant's work which he felt could be done more economically and efficiently by himself. He stated that he had determined that Appellant's position was expendable, but he could not cite specific reasons supporting his analysis.

Furthermore, Vigilante, to effect economy and efficiency, did not proceed by any discernible plan, and he testified to that effect. The fact that no financial emergency existed is not determinative, since a local government may always pursue

streamlining measures. But, here, Appellant and his position appeared to be singled out in an arbitrary fashion. Only Appellant was required to keep a log of his daily duties, and only he was laid off at the time. Although other positions were eliminated, such elimination occurred only because of attrition and not because of a coherent plan to cut expenses. Vigilante testified that future economic moves would be made, but he could not indicate when. He also intimated that pursuant to his continuing evaluation, other employees could even be hired instead of being laid off. The Commission concludes that such indecision and arbitrary action does not support a claim that economy and efficiency were served by Appellant's lay off.

However, as indicated above, merely showing that an employee's lay off did not necessarily effect economy and efficiency is not enough. The employee must show that he was removed for reasons other than those of economy and efficiency. Here, too, the Commission concludes that Appellant sustained his burden. Competent witnesses testified as to the Mayor's continuing grudge against Appellant. Further testimony indicated that the grudge came about because of political reasons. Although the Mayor stated publicly that he wished only to eliminate Appellant's position, he privately stated to more than one party that he had promised his father to get rid of both Appellant and Gabriel, a CETA employee whose position eventually was eliminated through attrition. Although the credibility of some of these witnesses was attacked by the appointing authority, others had no reason to be biased, and the Commission accepts the validity of their statements. Also, the Commission remains unconvinced that a proposed demotion with a cut of $9,000 in Appellant's pay indicates that the appointing authority only wished to reorganize for economy purposes and did not proceed against Appellant personally.

Decision

Such a large cut in pay had the foreseeable effect of forcing Appellant from his position and, in that regard, had the same effect as a layoff. As such, the fact that Appellant was offered a demotion in lieu of layoff cannot act as evidence of good faith.

Therefore, in view of the record as a whole, the Commission concludes that the appointing authority acted in bad faith in this matter. By a preponderance of the evidence, Appellant's removal was for political reasons and not for good faith reasons of economy and efficiency. Consequently, it reverses the recommendation of the Hearing Officer and orders that Appellant's appeal be sustained.

ORDER

The Civil Service Commission finds that the action of the appointing authority in laying off appellant was not justified. The Commission therefore reverses that action and orders that appellant be reinstated to his position.

The Commission further orders that appellant be awarded back pay for the period of layoff. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned by the appellant during this period. If there is proof of mitigation, reasonable counsel fees shall be awarded. However, the total award, including counsel fees, shall not exceed the amount of wages that would have been earned had there been no layoff. Proof of income earned and affidavit of services in support of reasonable counsel fees should be submitted to the appointing authority within 30 days from the receipt of this Order. However, this time limit is directory, not mandatory. Additional time will be granted for good and sufficient reason upon request.

Decision

DECISION RENDERED BY
THE CIVIL SERVICE
COMMISSION ON
SEPTEMBER 5 AND
DECEMBER 4, 1979

I hereby certify that the above is
a true copy of the original which
appears in the official record of
the Civil Service Commission.

s/ Joseph M. Ryan

Joseph M. Ryan
Acting Chief Examiner and Secretary
Department of Civil Service

attachment

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON THE APPEAL OF DAVID F. WILLIAMSON DATED JUNE 13, 1979

June 13, 1979

The appeal of David F. Williamson, Supervisor of Transportation and Parking Facilities, Town of Morristown, from the action of that town laying him off from his position, effective December 29, 1978, for reasons of economy, was regularly brought on for hearing before Hearing Officer Irvine L.H. Kerrison at Newark, New Jersey on January 22 and 25, March 1 and April 9, 1979 and the Hearing Officer rendered his Report and Recommendations on June 13, 1979. The hearing was held solely on the issue of good faith.

APPEARANCES:

Wayne H. Weiner, Esq.
for the Town of Morristown,
Respondent

Joel A. Murphy, Esq.
for David F. Williamson,
Appellant

The following witnesses testified on behalf of the respondent:

Donald Cresitello
Arthur A. Vigilante
Dorothy Wittrein

The appellant testified in his own behalf and called:

Hearing Officer's Report

Jerry A. Bittner
Margaret Brady
William Chambers
Charles Cutler
Raymond B. DeChiara
Marilyn Galdi
Beatrice M. Jenkins
Norman O. Lattimore
Joseph Leidy
David Manahan
Mark Pfeiffer
Jeanette Smith
Dorothy Tonry

The following exhibits were received in evidence:

R - 1 April 22, 1974 request for personnel action

R - 2A September 26, 1978 letter from Murphy to Department of Civil Service

R - 2B Notice of appeal attached to above letter

R - 3A through R - 3D Correspondence relating to insurance obligations of the Town of Morristown

R - 4 November 28, 1978 letter from Department of Civil Service to Murphy

R - 5 November 4, 1977 letter from Manahan to Cresitello

R - 6A through R - 6C	Case citations relating to abolishment of civil service positions
A - 1	Subpoena issued to Vigilante
A - 2	September 6, 1978 layoff notice from Vigilante to all classified employees
A - 3	September 6, 1978 layoff notice from Vigilante to Williamson
A - 4A and A - 4B	Ordinances of the Town of Morristown
A - 5A and A - 5B	January 23, 1975 letter from Bittner to Department of Civil Service with attached job description
A - 6	July 20, 1976 list of eligibles rating Williamson first
A - 7	October 8, 1975 letter from Bittner to Department of Civil Service
A - 8	1978 salaries for the Town of Morristown
A - 9	August 11, 1978 *Daily Record* news story
A - 10	Undated file memorandum regarding meeting of August 10, 1978

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A - 11 Daily activities file compiled by Williamson

A - 12 Annual report, 1977 bus transportation, Town of Morristown

A - 13 Annual report, 1977 risk management, Town of Morristown

A - 14 January 6, 1978 layoff notice from Vigilante to all classified employees

A - 15 1975 Report of the Reclassification and Salary Survey made for the Town of Morristown by the Department of Civil Service

A - 16 Subpoena issued to Vigilante

A - 17 December 3, 1974 report on insurance program from Insurance Buyers' Council, Inc. to Bittner

A - 18 Resolution No. R-129-74 of the Town of Morristown

A - 19 Risk management policy of the Town of Morristown

A - 20 Insurance manual of the Town of Morristown

A - 21 Table of organization of the Town of Morristown

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A - 22 *Personnel Rules and Regulations* of the Town of Morristown

A - 23 January 21, 1977 memorandum from Williamson to Bittner

A - 24 Ordinance No. 0-35-76 of the Town of Morristown

DISCUSSION

The action of the town was taken under N.J.A.C. 4:1 - 16.1 (Layoffs).

A subpoena (A-1) directing Vigilante to appear at the instant hearing was taken in evidence. A September 6, 1978 general notice of layoff (A-2) from Vigilante to all classified employees, indicating that layoffs for reasons of economy would be effective December 29, 1978 was taken in evidence. A September 6, 1978 individual notice of layoff (A-3) from Vigilante to Williamson, indicating that he would be laid off for reasons of economy, effective December 29, 1978, was taken in evidence.

The testimony of Williamson (1 - pp. 10-117 and A-4A through A-14) indicates:

1. He was given a provisional appointment as manager of bus transportation and off-street parking in April, 1974 with duties pursuant to the provisions of Ordinance No. 0-25-74 (A-4A), subsequently published in the *Daily Record* (A-4B) on October 2, 1974.

2. He was hired at a salary of $15,000 per annum.

3. Bittner clarified the duties of the position in a January 23, 1975 letter (A-5A) to the Department of Civil Service with attached job description (A-5B).

4. He took and passed the civil service examination for the position and was placed first on the certification of eligibles for appointment list (A-6) dated July 20, 1976.

5. By letter (A-7) of October 8, 1975 Bittner had asked the Department of Civil Service to accord Williamson permanent status in that position.

6. In addition to his transportation and parking duties, he was given the assignment of handling insurance for the Town of Morristown.

7. The salary range for his position in the 1978 salary ordinance (A-8) was $16,560 to $19,170, and he was at the top of the range.

8. After Cresitello and Vigilante took over on January 1, 1978, he continued his transportation, parking and insurance duties without any dissatisfaction being expressed by either.

9. His first public indication that there was dissatisfaction came in an August 11, 1978 news story (A-9) in the *Daily Record* which read, in part:

> "Cresitello also said that transportation manager David Williamson, who earns $19,000 annually, has been given to the end of the year to find

another job or to choose to remain here with a $9,000 cut in pay. Cresitello said he does not believe Williamson's duties warrant a $19,000 salary."

"If Williamson decides to stay on, his duties would be increased, Cresitello said. Otherwise, the responsibilities will be handed over to someone else, he said."

10. He had been given personal notice of dissatisfaction during an August 10, 1978 meeting with Vigilante, the substance of which he recorded in a file memorandum (A-10). Vigilante said Cresitello would let him stay at $12,000 and wanted an answer the next day. The file memorandum also alluded to the news story quoted above. Williamson, after reading it, told Vigilante he could not give him an answer August 11 because he was not sure what Cresitello was offering him.

11. He recalled a casual conversation with Vigilante after Cresitello had taker over as mayor in January, 1978 during the course of which Vigilante stated that Cresitello was going to have to take care of his campaign promises to institute economies in government and intimated that Williamson would have to go. However, he expressed no dissatisfaction with Williamson's work.

12. On March 28, 1978, Vigilante asked Williamson to keep a log of work done in his office, indicating that Cresitello was making the same request of the Consumer Affairs and Electrical Departments.

13. Williamson kept a daily log (A-11) for the period March 29 through April 28, 1978 detailing everything his office did on a minute by minute basis.

14. He prepared annual reports on 1977 bus transportation (A-12) and 1977 risk management (A-13).

15. He received a copy (A-14) of the September 6, 1978 general layoff notice alluded to above in his pay envelope on September 29, 1978.

16. Prior to taking on his insurance duties, the town had him attend a course in risk management at the University of Maryland.

17. Since he was laid off, there has been no cutback in the transportation program, to the best of his knowledge no other permanent town employee has been laid off and he knows of no economic crisis in Morristown.

18. Beginning in 1974, for three ninety-day appointments, he also served as acting director of public utilities, overseeing the water department and the airport.

19. His duties extended beyond start up of bus and parking facilities as outlined on the April 22, 1974 request for personnel action with attached duties (R-1), also alluded to above as A - 1. He hired and trained sixteen bus drivers, carried on the insurance program, and carried on the day-to-day operations of both the transportation and one parking program.

20. The log he kept for the period March 29 through April 28, 1978 alluded to above was typical of his duties on a year-

round basis and Cresitello never accused him of not doing his job.

21. The appeal (R-2A and R-2B) filed on his behalf by Murphy on September 26, 1978 charged that that his layoff was arbitrary and politically motivated rather than made for reasons of economy.

22. He was not aware of the fact that DeChiara took a $3,000 cut in salary after the Cresitello administration took over.

The testimony of Jenkins (1 - pp. 117-138) indicates:

1. As councilwoman and council president, she is familiar with both Williamson and his job. She knows of no complaints with regard to the quality of his work made to the council.

2. During 1977, before he became mayor, Cresitello indicated to her that he was going to eliminate the appellant but not the job he performed. He also stated that he did not want Williamson in any position in Morristown for reasons that went way back in politics.

The testimony of Leidy (1 - pp. 138-142) indicates:

1. As councilman, he is aware of both Williamson and his job. He knows of no complaints with regard to the quality of his work made to the council.

2. He believes that administrative salaries in the Town of Morristown generally are higher than they should be and he has been a participant in discussions of economy moves.

3. He was not aware of any moves on the part of Cresitello to dump Williamson.

The testimony of Brady (1 - pp. 142-146) indicates:

1. As a councilwoman who took office on January 1, 1978, she knows both Williamson and his job. She is not aware of complaints with regard to the quality of his work made to the council.

2. She could recall no conversation amongst council members as to cutting out Williamson's job.

The testimony of Lattimore (1 - pp. 146-155) indicates:

1. As Director of the Department of Public Services, he has heard no complaints as to the quality of the appellant's work.

2. He had been told that some jobs, including that of Williamson, were to be cut for economic reasons.

3. Following the 1973 primary, Cresitello told him that neither Gabriel nor Williamson would remain as part of his administration. He also said that he considered the appellant an adversary.

The testimony of Cutler (1 - pp. 155-162) indicates:

1. Cresitello was doing electrical work for him on a Morristown job.

2. During December, 1977, in Cresitello's office, the mayor-elect told him that he had promised his father that he would get rid of both Gabriel and Williamson.

3. Cresitello said nothing about wanting to get rid of Williamson either for economic reasons or because of the poor quality of his work.

4. He admitted that Cresitello opposed his appointment as building inspector for the Town of Morristown in March, 1978.

The testimony of Bittner (2 - pp. 2-35 and A-15) indicates:

1. As former business administrator of the Town of Morristown, he was familiar with the duties of Williamson and considered them to be on-going.

2. He used the appellant in capacities other than transportation and insurance from time to time, as he did other department heads.

3. He was well satisfied with Williamson's overall performance.

4. At the time he left the employ of the Town of Morristown, he knew of no economic reason for abolishing Williamson's job.

5. Cresitello, when still a councilman, told him that he wanted to eliminate the appellant because he was a political ally of Manahan.

6. Cresitello also felt that his salary and those of other administrators were too high.

7. The 1975 reclassification and salary survey (A-15) prepared for the Town of Morristown by the Department of

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Civil Service defined Williamson's job as supervisor of transportation and parking facilities broadly:

> "Under direction, supervises the establishment development and maintenance of a transportation and parking system; does related work as required."

The testimony of DeChiara (2 - pp. 35-39) indicates:

1. As director of the Morristown urban renewal project, he was aware that Cresitello wished to eliminate Williamson's job.

2. After Cresitello took over, he received a $3,000 cut in salary because part of his job was abolished.

The testimony of Pfeiffer (2 - pp. 39-54) indicates:

1. As former administrative assistant to Bittner and Vigilante, the latter told him, after Cresitello took over, that the mayor wished to get rid of Williamson.

2. Some councilmen also objected to the size of the appellant's salary as well as those of other administrators.

3. Although he resigned his position, he had been told by Vigilante that he was slated for layoff for economic reasons because Vigilante had no need for an administrative assistant.

The testimony of Vigilante (2 - pp. 54-111, 3 - pp. 3-120, R-3A through R-3D, R-4 and A-15 through A-23) indicates:

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1. As business administrator of the Town of Morristown, he personally served Williamson his individual notice of layoff for reasons of economy alluded to above on September 6, 1978.

2. During August, 1978, he had called the appellant into his office, told him that he was considering eliminating his position because it was overpriced, but indicated that the Cresitello administration would keep him on if he would take a salary of $10,000 to $12,000. Williamson replied that he would consider $12,000. On September 5, 1978, he stated that, after thinking it over, he could not.

3. Prior to coming to the Town of Morristown as municipal clerk in 1961, he had had twenty-one years as an accountant with International Paper Company, fifteen of which he served as supervisor of twenty-one plant accounting offices throughout the U.S. In that capacity he had eliminated many positions for reasons of economy.

4. When, after January 1, 1978, he took over as business administrator in the Cresitello administration, the mayor asked him to review all personnel with the objective of instituting economies by eliminating unneeded positions.

5. As part of that review, he analyzed Williamson's position, in connection with which he asked the appellant to keep the daily log (A-11) alluded to above.

6. He examined that log and also the two annual reports (A-12 and A-13) alluded to above and concluded that Williamson was being overpaid for the work he was performing.

7. Much of the insurance claim work from 1974 into 1978 was performed by the municipal clerk as evidenced by letters (R-

3A through R-3D) signed by Vigilante in that capacity and by William M. Chambers, his successor in that capacity.

8. Other economies instituted by him included not replacing a clerk in municipal court, not replacing the assistant municipal engineer who resigned, not replacing a deceased automobile mechanic, eliminating the department of planning and development, putting a freeze on hiring of additional police officers, and eliminating the department of consumer affairs.

9. When a new director of public works was hired, the salary was dropped from twenty-nine to twenty-five thousand dollars.

10. He took over Williamson's duties with regard to bus transportation and risk management on which he spends no more than one hour per day or five hours per week. He does not intend to budget or fill Williamson's position in future.

11. He denies discussing Williamson with Pfeiffer.

12. He was receiving approximately $30,000 per year as municipal clerk; his salary as business administrator is approximately $39,000 per year.

13. He did not keep a written record of the effectuated economies alluded to above; each was discussed with Cresitello at the time it was made.

14. He identified the subpoena (A-16) directing him to appear at the March 1, 1979 hearing with Williamson's records, a December 3, 1974 report (A-17) from Insurance Buyers' Council, Inc. to Bittner, Town of Morristown Resolution No. R-

129-74 (A-18) entering into an agreement with Insurance Buyers' Council, Inc., Town of Morristown risk management policy (A-19), and Town of Morristown insurance manual (A-20).

15. He and clerk Jeanette Smith are handling the insurance, bus transportation and off-street parking duties formerly performed by Williamson with Smith's assistance and in accord with procedures the appellant and Smith developed.

16. He admits that Williamson's is the first layoff; other economies alluded to above have been made through death or attrition; however, other layoffs are under consideration.

17. He made the determination to lay off the appellant on the basis of his observation of Williamson's work load from January 1, 1978, a review of the daily log he directed him to keep and discussions with employees subordinate to Williamson. He concluded that he could do the work himself and in a shorter time.

18. He identified the Town of Morristown table of organization (A-21) and the Town of Morristown *Personnel Rules and Regulations* (A-22).

19. Morristown rules and regulations conform to Department of Civil Service rules and regulations and he followed the latter in laying off Williamson.

20. He identified Williamson's risk management report (A-23) for 1977 and stated that he and Smith would prepare a similar report for 1978.

21. A November 28, 1978 letter (R-4) from the Department of Civil Service to Murphy indicates that Williamson's name

would appear on a special reemployment list for the position of supervisor of transportation parking facilities should that position ever be recreated. At that time, however, there were no special reemployment or demotional opportunities available to the appellant.

22. He stated that, having performed Williamson's duties during 1979, he no longer would offer him $12,000 per annum to do the work.

The testimony of Cresitello (3 -pp. 124-158 and 4 - pp. 2-60) indicates:

1. As a councilman, before he became Mayor, he considered the positions and salaries of a number of Morristown administrators, including Williamson, as unnecessary. Jenkins. too, initially agreed with him regarding the appellant.

2. He denies having instructed Vigilante to get rid of Williamson.

3. He confirms discussions with Vigilante regarding the economies effectuated alluded to above.

4. He does not recall telling Lattimore that he considered Williamson to be an adversary. Lattimore was upset by his dismissal of Gabriel.

5. He admits to telling Cutler that his father would be pleased to see the appellant go but only in the context of his position, not his person.

6. He admits that Bittner was correct in stating that he wanted to eliminate Williamson's job.

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7. Both as councilman and mayor, he felt Williamson's position was unnecessary and his duties could be transferred to other departments or individuals. Councilwoman Jenkins and councilmen William Klein and Thomas Zenick also initially objected to the position.

8. Williamson's salary was omitted from the 1979 budget approved by the council.

The testimony of Wittrein (4 -pp. 60-73) indicates:

1. As a bus driver under the supervision of Williamson, she found that problems she reported to him were not always corrected.

2. Door malfunctions she reported in 1978 still are not fixed.

3. She had recurring difficulties with Williamson over her paychecks; e.g., payment for overtime.

The testimony of Galdi (4 - pp. 74-84) indicates:

1. She has served as administrative secretary to both Bittner and Vigilante.

2. She typed correspondence with regard to elimination of Williamson's job when the Cresitello administration took over in January, 1978.

3. Since the appellant's departure, Smith and Vigilante handle the bus transportation and she does some of the work of the insurance program.

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The testimony of Smith (4 - pp. 84-88) indicates:

1. She and Vigilante are working on both bus transportation and insurance functions formerly handled by the appellant.

2. Vigilante does not spend as much time on those functions as did Williamson.

The testimony of Chambers (4 - pp. 89-101 and A-24) indicates:

1. He has served as municipal clerk since January, 1978.

2. Town of Morristown Ordinance No. 0-35-76 (A-24) authorized the business administrator to promulgate personnel rules and regulations for town employees in accord with civil service statutes.

The testimony of Tonry (4 - pp. 101-103) indicates that, during his campaign, Cresitello told her that, if elected, he would cut Morristown expenses by firing a number of employees including Gabriel and Williamson.

The testimony of Manahan (4 - pp. 103-114 and R-5) indicates:

1. During his administration, Bittner secured civil service certification for Williamson.

2. Both Cresitello and his father had opposed Williamson's appointment on political grounds; he had a past history of working with Republicans.

3. After Cresitello had defeated him in the primary, by letter of November 4, 1977 (R-5), he called his opponent a political opportunist and a man with the potential to become the worst mayor Morristown would ever have.

4. While he was mayor, he was satisfied that Williamson was performing a full-time job.

Weiner cited three court cases (R-6A through R-6C) to underscore the fact that civil service positions may be abolished for reasons of economy.

FINDINGS OF FACT

From the testimony adduced and the exhibits submitted during the course of the hearing, the Hearing Officer makes the following findings of fact.

1. As a councilman and during his 1977 mayoralty campaign, Cresitello made it clear that he considered the positions and salaries of a number of Town of Morristown administrators unnecessary. The position held by Williamson was one he specifically mentioned, stating that the appellant's duties could readily be transferred to other departments or individuals.

2. When the Cresitello administration took over in January, 1978, it did effectuate economies. In addition to eliminating the positions of Gabriel and Williamson, it did not replace a municipal court clerk, did not replace the assistant municipal engineer who resigned, did not replace a deceased automobile mechanic, eliminated the department of planning and development, cut some salaries, placed a freeze on the hiring

of additional police officers, eliminated the department of consumer affairs, and is conducting a continuing study of other positions that may be either eliminated or reduced.

3. Williamson's initial job description called for setting up of a senior citizens' bus transportation facility and planning and supervision of off-street parking. Once the bus system was set up, he was responsible only for keeping two buses running. His planning and supervision of off-street parking ultimately was reduced to handling of one parking lot.

4. Insurance and miscellaneous duties assigned to Williamson by Bittner were not part of his civil service job description. In addition, much of the insurance work has been and is being performed by the municipal clerk's office.

5. Vigilante and Smith now handle the bus transportation and risk management duties formerly performed by Williamson and Smith, with Vigilante spending no more than one hour per day or five hours per week on them. The Cresitello administration does not intend to budget for or fill Williamson's position.

CONCLUSION

From all of the evidence, the Hearing Officer concludes that the Town of Morristown laid off the appellant, David F. Williamson, from his position of Supervisor of Transportation and Parking Facilities, effective December 29, 1978, for reasons of economy and in good faith.

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RECOMMENDATION

So concluding, the Hearing Officer recommends that the action of the Town of Morristown laying off the appellant, David F. Williamson, effective December 29, 1978, for reasons of economy be affirmed.

s/ Irvine L.H. Kerrison

IRVINE L.H. KERRISON
Hearing Officer